

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 668 OF 2016

Satyanarayan Prakash Pande,
Age 42 years, Occupation Nil,
R/o Plot No.30, Sant Narhari
Nagar, Old Wadjai Road,
Market Yard, Dhule.

..Petitioner

Versus

Divisional Controller,
MSRTC, Dhule Division,
Dhule.

..Respondent

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Advocate for Petitioners : Shri Patil Sandesh R.
Advocate for Respondent : Shri Bagul D.S. a/w Shri Jain R.N.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 22, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the following three orders:-
 - (a) The Part I judgment of the Labour Court dated

16.7.2011, concluding that the enquiry was conducted in a fair manner and the findings of the Enquiry Officer are not perverse.

(b) The final judgment of the Labour Court dated 25.11.2011, by which, Complaint (ULP) No.8 of 2010 filed by the petitioner challenging his dismissal from service dated 7.1.2010, has been dismissed.

(c) The judgment of the Industrial Court dated 4.10.2013, by which, Revision (ULP) No.4 of 2012 filed by the petitioner has been dismissed.

5. I have heard Shri Patil, learned Advocate for the petitioner and Shri Jain and Shri Bagul, learned Advocates for the respondents.

6. The petitioner joined as a Bus-Conductor with the respondent MSRTC in 1997. He was dismissed from service for proved misconducts in 2007. His first department appeal was partly allowed and he was issued with a fresh appointment order. As such, his dismissal was sustained.

7. On 5.2.2009, there was a surprise check of the Bus traveling from Dhule to Amalner at Naval Nagar. There were 23 pass holding

students and daily pass holders amongst about 50 to 55 passengers. One lady passenger gave a statement to the checking squad that the petitioner had received an amount of Rs.27/- and yet did not issue any ticket. The other charge was that he had failed in reverse punching the ticket, which is a practice in MSRTC. The third charge was that the cash held by the petitioner suffered a short fall of Rs.21/-.

8. After conducting a disciplinary proceeding pursuant to the charge sheet dated 2.6.2009, the petitioner was awarded the punishment of dismissal from service dated 7.1.2010.

9. By the Part I judgment, the enquiry was sustained and by the final judgment, the Complaint was dismissed. So was the revision petition filed by the petitioner.

10. Shri Patil strenuously submits that the statement of a single passenger is no evidence in the eyes of law. The said lady passenger was not examined in the enquiry. Her statement recorded was not proved through her evidence in the enquiry. As such, there was no evidence at all before the enquiry officer, so as to conclude that the petitioner was guilty of the charge of accepting money and not issuing a ticket.

11. In so far as reverse punching is concerned, the petitioner had stated before the enquiry officer that since his wife had suffered burn injuries in December 2008, he was tensed up. He, therefore, inadvertently failed in reverse punching of the tickets. The enquiry officer has exonerated him of the said charge.

12. In so far as the charge of having less cash by Rs.21/- in his cash box, is concerned, Shri Patil submits that shortage in cash does not indicate any misconduct. In fact, it would prove that there was some mis-calculation of the fare received and in turn it would indicate that the lady passenger was not telling the truth since she wanted to avoid being penalized for traveling ticket less. He, therefore, submits that all the three impugned orders deserve to be quashed and set aside and the petitioner deserves to be reinstated with continuity and full backwages. In the alternative, he submits that the petitioner is willing to accept the fresh appointment since he is the only earning hand in the family

13. Learned Advocate for the respondent has defended the three impugned orders. He submits that the past service record of the petitioner is highly blemished and hence no interference is called for.

14. I have considered the submissions of the learned Advocates.

15. In so far as the second charge is concerned, the petitioner has been exonerated. The third charge of having less cash by Rs.21/-, though may not outright indicate a mis-conduct, the fact remains that under the MSRTC Discipline and Appeal Rules, shortage in cash is indicative of pilferage of money. So also, the statement of the lady passenger cannot be easily brushed aside on the ground that she may be lying in order to avoid being penalized for traveling ticket less.

16. The Honourable Supreme Court in the matter of State Bank of Patiala Versus S.K.Sharma [AIR 1996 SC 1669 = (1996) 3 SCC 364], has concluded that an enquiry should not be interfered with merely on account of procedural infirmities. Unless, substantive rights flowing under the Rules are not violated, an enquiry should not be easily set aside.

17. The issue of recording the statement of a passenger and not examining the passenger in the departmental enquiry has been considered by the Honourable Supreme Court in the matter of KSRTC Vs. B.S.Hullikatti [AIR 2001 SC 930], and in the matter of Divisional Controller, KSRTC Vs. A.T.Mane [(2005) 3 SCC 254],. The Apex Court has ruled that merely because a passenger is not examined in the enquiry, would not mean that the charge is not proved. It is held that non-examination of the passenger would not affect the result of the

enquiry.

18. In service jurisprudence, charges are held to be proved on the basis of available evidence and on the preponderance of the principles of probabilities. If the evidence available before the enquiry officer would be indicative of the offence having been committed, strict Rules of evidence under criminal jurisprudence are not to be made applicable. As such, the statement of the lady passenger in the instant case, in the light of settled law, would prove that the misconduct alleged against the petitioner is likely to have been committed.

19. On the principles of probabilities, the contention of Shri Patil that the lady passenger may have made a false statement, could have been considered, but for the fact that the petitioner has developed a habit of committing such misconducts. After joining duties, he was once punished for a similar misconduct. In 2007, he was dismissed from service for a similar misconduct. The Corporation showed leniency towards him and appointed him afresh. The petitioner has committed the misconduct at issue within two years from his reappointment. The blemished past service record would, therefore, be indicative that the petitioner has developed a habit of letting passengers travel ticket less. He has been apprehended three times and it cannot be ruled out that such instances may have

frequently happened when the petitioner was not apprehended.

20. In so far as the proportionality of the punishment awarded to the petitioner is concerned, the Honourable Supreme Court in the matter of Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nourana Sangha Etc. [(2000) 7 SCC 517], and the learned Division Bench of this Court in P.R. Shele Vs. Union of India and others [2008 (2) Mh.L.J. 33], has concluded that such instances of misappropriation are to be dealt with, with an iron hand and the amount of misappropriation cannot be a ground for showing sympathy towards an employee.

21. In the light of the above, I do not find that the impugned orders could be termed as being perverse or erroneous. This petition being devoid of merits is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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